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ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SAMUEL BERTRELL MOORE,
Petitioner,

v.

DAVID ROMINE,
Respondent,

CIVIL NO. 1:CV-00-2148

(Judge Caldwell)

(Magistrate Judge Swyers)

Per

MARTE E. D'ANDREA, CLERK

DEPUTY CLERK

APR 12 2001

FILED
HARRISBURG

**MOTION FOR RECONSIDERATION OF THE MAGISTRATE JUDGE'S RULING,
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Pursuant to Rule 72.2 of the Rules of Court, M.D. Pa.,
Petitioner identifies his objections to the magistrate judge's
report, seeks reconsideration and prays the court for declara-
tory judgment and injunctive relief.

Specifically, the magistrate judge did not address the
merits of Petitioner's writ of habeas corpus pursuant to §2241,
but rather recommended that the petition be dismissed based on
the petitioner's failure to exhaust administrative remedies.
Citing, Moscato v. Federal Bureau of Prisons, 98 F.3d 757, 760
(3d Cir. 1996)("Federal prisoners are ordinarily required to
exhaust their administrative remedies before petitioning for a
writ of habeas corpus pursuant to §2241.")(Emphasis added).

The magistrate judge also stressed that the basic ration-
ale for the exhaustion requirement is that judicial review may
be facilitated by the agency's development of a factual record,
that judicial time may be conserved if the agency grants the re-
lief sought, and that administrative autonomy requires that an
agency be given an opportunity to correct its own errors. Citing,
Arias v. United States Parole Comm'n, 648 F.2d 196, 199 (3d Cir.
1981).

OR 16.
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WJ

OBJECTIONS TO REPORT

Petitioner concedes that he began, but did not fully exhaust his administrative remedies, do to the insensate tone of voice and the aggressive/negative demeanor, of U.S.P. Allenwood staff, in response to his request for the appropriate form to go to the next administrative level seeking relief.

Begging the Court's indulgence, petitioner will briefly and chronologically illuminate the series of occurrences that culminated into a negative/adversarial atmosphere, between himself and Allenwood staff, whereupon, when he tried to file the appropriate form to go to the next administrative level in these instant matters, he was told "it might be a good idea to leave it alone" and that "people have lost good time for making a nuisance of themselves and filing frivolous paperwork that is a waste of time." Petitioner considered himself forewarned by the numerous admonitions of staff members when he told them that their interpretation of the record was "wrong."

Creation of Adversarial Atmosphere:

1. On April 2, 1997, Petitioner sought remedy for grievous error in his sentence computation from the BOP. The Inmate Systems Manager's Office responded on April 8, 1997, denying the request based on various erroneous readings of the record. (See: Gov. Ex. 5 or Petit. App. 13-1,2).
2. On May 6, 1997, Petitioner filed an unrelated Motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. §2255, in the U.S. District Court for the District of Columbia, to have his Appellant rights restored, and initiated several months of intense ongoing litigation involving his pro se petition. (See: Petit. Ex.2,

pp. 6-8, items 24 thru 34 [Resentencing]).

3. On June 27, 1997, the sentencing court, Judge Stanley Sporkin, granted petitioner's motion and vacated his sentence.

4. On September 10, 1997, a writ of habeas corpus ad prosequendum was issued to the Warden, U.S.P. Allenwood, PA, and shortly thereafter, petitioner left Allenwood for his hearing in U.S. District Court for the District of Columbia.

5. On September 30, 1997, petitioner was resentenced to the same sentence with three significant changes: (1) the restoration of his appellant rights, (2) given credit for time served, (3) reduction in supervised release from five years to three years. However, while petitioner's new (second) judgment & commitment now reflected " **credit for time served**," it did not reflect the change in his supervised release from five years to three years. (See: Petit. App. 4-1 thru 4-3).

6. After some delay in Washington, D.C., petitioner was returned, several months later, to Allenwood, PA.

7. On January 6, 1998, petitioner initiated a request for relief to Mr. F.T. Mummaw, Associate Warden UNICOR, U.S.P. Allenwood, PA, to correct promotional practices, on his job site, that he felt were despotic, discriminatory, and insidious in their application. More than nine (9) months later this request for Administrative Remedy was denied by the Warden. (See: Attachment).

Sometime after his return from being resentenced, petitioner, now in possession of his new judgment & commitment sheet, with its pronouncement of "**credit for time served**," began to once again inquire regarding the grievous error in his sentence computation from the BOP. It was into the volatile whirlwinds of the foregoing

chronicle of conflict that petitioner made his inquiries, and within this adversarial atmosphere petitioner was thwarted in his attempt to pursue a remedy, told to "leave it alone."

Shortly thereafter, petitioner was transferred out of U.S.P. Allenwood to FCI - Schuylkill, Minersville, PA.

Ordinarily, federal prisoners are required to exhaust their administrative remedies, however, given the totality of these extraordinary circumstances, where, at the time of petitioner's further inquiries pertaining his 400 days credit for time served, he was exhausting his administrative remedies pertaining another matter leading up to a civil suit for discrimination and damages incurred at his prison work site. Consequently, he was obstructed from further inquiry into these instant matters. Result depends on cause. Petitioner prays that the Court will grant him Reconsideration, schedule a hearing on the merits of his §2241 Motion, and resolve the adverse interest of this instant controversy, to the benefit of both the BOP and petitioner, in the interest of justice.

PRAYER FOR DECLARATORY JUDGMENT

Pursuant to 28 U.S.C. §1331 and §2201(a), the court has jurisdiction, in this case of actual controversy, to declare the rights and the legal relations of petitioner and the BOP, pursuant to Article III, Section 2 of the Constitution of the United States, where there is the existence of a "case or controversy." See Travelers Ins.Co. v. Obuser, 72 F.3d 1148, 1154-55(3d Cir.1995); and Allen v. Wright, 468 U.S. 737, 751, 82 L.Ed.2d 556, 104 S.Ct. 3315(1984) (To meet the standing requirements of Article III, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.")

The meritorious record of these instant matters affirmatively shows petitioner has clearly alleged facts invoking the courts jurisdiction over this immedicate and substantial controversy, to warrant the issuance of a declaratory judgment.

Adversity of Interests:

The BOP has increased petitioner's sentence by 400 days, contrary to the pronouncement of the sentencing court, and said deprivation has created adverse legal interests, a substantial threat of real harm, and the threat shall remain real and immediate throughout the course of this litigation. The instant issues are not based on hypothetical facts. Petitioner relies on the merit of the record he has established in this instance, to amplify the magnitude of his hardship and warrant the issuance of declaratory judgment. See Johnson v. Guhl, 91 F.Supp.2d 754,766-67(D.N.J.2000); and Philadelphia Federation of Teachers v. Ridge, 150 F.3d 319,323(3d Cir. 1998).

Conclusiveness and Utility:

The concrete facts of this case show that petitioner's sentence has been increased by 400 days, by an actual wrong committed by the BOP. The court may engage in its fact finding role and declare petitioner's rights based on a hearing, to clarify and substantiate a record that will guide the BOP and petitioner in their future conduct with ^{EACH} other. In the interest of justice, provide a means for determination of a bona fide controversy which can be settled more satisfactorily in an action for declaratory judgment than in the ordinary form of administrative remedy. Given the erroneous reading of records accessed and possessed by the BOP. See Armstrong World

Industries, Inc. v. Adams, 961 F.2d 405,412(3d Cir.1992)(Without the necessary facts, the court is left to render an advisory opinion).

Petitioner's loss will not occur, and his asserted rights will not be invaded, until he has finished serving what amounts to the 151 months pronounced by the sentencing court, and then begins to serve the extra 400 days wrongfully conjoined and added to his sentence through miscalculation by the BOP. Petitioner prays for the declaration of his rights before the hardship matures. There is no uncertainty that the loss will occur or that the asserted right will be invaded, unless, the court removes the doubt and declares the rights of all interested parties. Petitioner does not attempt to provide a substitute for exhaustion of administrative remedies, but rather, to appropriate the rights of petitioner as well as the rights of the BOP, and nothing more, where compelling and unusual circumstances exist. See Algrant v. E.V.N.L.P., 126 F.3d 178,190(3d Cir. 1997)(Court's "may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.")

According to the Advisory Committee Note to Federal Rule of Civil Procedure 57 entitled Declaratory Judgment, "the existence or non-existence of any right, duty, ...or immunity... may be declared." As the district court correctly noted, Rule 57 does not preclude the exercise of jurisdiction where another adequate remedy exists. One comentator formulates the test for whether the district court should exercise federal jurisdiction when a parallel state court action exists as a determination of "which will most fully

serve the needs and convenience of the parties and provide a comprehensive solution of the general conflict." 10A Wright, Miller, Kane, Federal Practice and Procedure §2758(West 1983) (Cited, U.S. v. Com. of PA., Dept. of Envir. Resources, 923 F.2d 1071,1074-75 (3d Cir. 1991)).

There is no good reason to force petitioner through administrative process, where in good faith he attempted to exhaust remedies, but was thwarted, and now he is advancing a substantial complaint that the BOP has abused its "interpretive" authority, and the administrative action which deprived him of 400 days of his sentence is unconstitutional. Under the extraordinary circumstances of these instant matters, it will be a waste of time to seek administrative remedy from the same agency whose actions are being challenged. The same agency from whom the government retrieved its erroneous interpretation of information now in this instant record, to file its response to petitioner's §2241 Motion.

For substantial cause shown, petitioner prays the court will grant a hearing to declare the rights of all interested parties.

PRAYER FOR INJUNCTIVE RELIEF

There is a strong likelihood of success on the merits of petitioner's claim, and he will inevitably succeed. There is an actual possibility of irreparable harm if the injunction is not granted, and injury has already occurred and been shown by the BOP's continual deprivation of 400 days of petitioner's sentence. There is no possibility of irreparable harm to the BOP or any other party if the injunction is granted and petitioner's "credit for time served" is restored to him. The public has a very substantial interest in not having a significant portion of petitioner's sentence arbitrarily

AND CAPRICIOUSLY TAKEN AWAY BECAUSE OF ERRONEOUS EVALUATION OF BOP RECORDS BY BOP STAFF. SOCIETY IS FURTHER SERVED BY PRESERVATION OF THE INTEGRITY OF THE CRIMINAL JUSTICE PROCESS, AND MORE PROFOUNDLY, IT HAS AN INTEREST IN TREATING PETITIONER, AND ALL PRISONERS, WITH BASIC FAIRNESS TO ENHANCE THE CHANCE OF REHABILITATION BY AVOIDING NEGATIVE AND ANTI-SOCIAL BEHAVIORAL REACTIONS TO SAID ARBITRARINESS. PETITIONER HAS A RIGHT AND A DUTY TO PRESERVE A REASONABLE EXPECTATION TO BE RESTORED, ON TIME, TO A NORMAL AND USEFUL LIFE WITHIN THE LAW. SEE, OPTICIANS ASS'N OF AMERICA V. INDEP. OPTICIANS OF AMERICA, 920 F.2d 187, 191-92 (3d CIR. 1990); BRADLEY V. PITTSBURGH Bd. OF EDUC., 910 F.2d 1172,

1175 (3d Cir. 1990); AND, CLEAN OCEAN ACTION V. YORK, 57 F.3d 328, 331 (3d Cir. 1995).

PETITIONER IS NOT CONCERNED, AT THIS JUNCTURE, WITH ECONOMIC LOSS OR MONETARY GAIN. THE WRONGFUL DEPRIVATION OF HIS LIBERTY IS AN IRREPARABLE AND IMMINENT INJURY TO HIS LIFE OF SUCH PECULIAR NATURE THAT, ONLY ITS RESTORATION CAN ATONE. SEE, A.O. SMITH CORP. V. F.T.C., 530 F.2d 515, 525 (3d Cir. 1976); AND, ACIERNO V. NEW CASTLE COUNTY, 40 F.3d 645, 653 (3d Cir. 1994).

PETITIONER FURTHER SUPPORTS, ON REAL AND CONCRETE FACTS, THE INEVITABLE ACTUAL SUCCESS OF THE MERITS OF HIS CLAIM, WITH AN

INDISPUTABLE GOOD FAITH SHOWING OF LITIGATION
FILED SHORTLY AFTER HIS INITIAL ARREST ON
NOVEMBER 7, 1995, BY FEDERAL AUTHORITIES FOR
BANK ROBBERY, TITLE 18 U.S.C. § 2113(a), WHERE,
AN ARREST STARTS THE CLOCK (SPEEDY TRIAL ACT)
ONLY IF IT IS IN CONNECTION WITH FEDERAL CHARGES.
INDICTMENT WAS ON DECEMBER 7, 1995. (SEE
PETIT. EX. 2, p.5, ITEM 12) ALSO, (SEE ATTACHMENT:
MOTION TO DISMISS THE INDICTMENT) AND, U. S. v.
MILLS, 964 F.2d 1186, 1188-89 (D.C. Cir. 1992)
(EN BANC).

PETITIONER CANNOT CHARGE, WITH CLEAR
CONSCIENCE, THAT THE BOP IS INTENTIONALLY
FLOUTING THE LAW, ONLY THAT IT IS WRONG IN

ITS INTERPRETATION OF THE RECORD, AND SUBSEQUENT INJURIOUS APPLICATION OF ITS ADMINISTRATIVE AUTHORITY. AS AN AGENCY, THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT REQUIRES THAT THE BOP'S ACTIONS BE CONSISTENT WITH THE FUNDAMENTAL PRINCIPALS OF LIBERTY AND JUSTICE WHICH BE AT THE BASE OF OUR CIVIL AND POLITICAL INSTITUTIONS, WHICH NOT INFREQUENTLY ARE DESIGNATED AS THE "LAW OF THE LAND." HEBERT V. LOUISIANA, 272 U.S. 312, 316-17, 47 S.Ct. 103, 71 L.Ed. 270 (1926).

"BY THE LAW OF THE LAND, IS MOST CLEARLY INTENDED, THE GENERAL LAW; A LAW, WHICH HEARS BEFORE IT CONDEMS; WHICH PROCEEDS

UPON INQUIRY, AND RENDERS JUDGMENT ONLY
AFTER TRIAL." TRUSTEES OF DARTMOUTH COLLEGE V.
WOODWARD, 17 U.S. 518, 4 WHEAT. 518 (1819)
(MR. DANIEL WEBSTER).

CONCLUSION

WHEREFORE, PETITIONER PRAYS THAT THE
COURT WILL RECONSIDER THE MAGISTRATE JUDGE'S
RULING, HEAR HIS PRAYER FOR DECLARATORY
AND INJUNCTIVE RELIEF, AND GRANT A HEARING
TO DETERMINE THE MERITS OF HIS CLAIM OR ANY
FAVORABLE ALTERNATIVE THE COURT DEEMS FIT AND
PROPER.

RESPECTFULLY SUBMITTED,
S. Moore Bey
SAMUEL B. MOORE-BEY, PRO SE

CERTIFICATE OF SERVICE

I CERTIFY THAT I HAVE CAUSED TO BE FORWARDED, BY U.S. CERTIFIED MAIL, THE ORIGINAL AND TWO (2) COPIES OF MY MOTION FOR RECONSIDERATION OF THE MAGISTRATE JUDGE'S RULING, DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF, TO THE CLERK OF THE COURT FOR THE MIDDLE DIST. OF PA, 228 WALNUT STREET, P.O. BOX 983, HARRISBURG, PA 17108, TO BE SERVED ON ALL INTERESTED PARTIES IN THESE INSTANT MATTERS, ON THIS 8TH DAY OF APRIL, 2001.

S. Moore Bey
SAMUEL B. MOORE-BEY, PRO SE

EXHIBITS

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

INMATE REQUEST TO STAFF MEMBER

DATE January 6, 1998TO: Mr. F. T. Mummaw, Associate Warden UNICOR, FCC
(Name and title of officer)RE: The Record

SUBJECT: State completely but briefly the problem on which you desire assistance, and what you think should be done (Give details)

I have been employed by UNICOR since February 1997. During that period, to date, I have been allowed over-time work on one(1) occasion (eleven months!). I recently inquired about a grade-level raise. I was told that in order for me to move from grade-3 to grade 2, I must be able to build the Queen Ann Chair line. Upon investigation, I found this to be untrue. Men similarly situated, who work with me in the production area, have not been made to build Queen Ann's before receiving a grade advancement. I have no educational restrictions (possess two college degrees), and no fir These current arbitrary and capricious practices are both discriminatory and contrary to UNICOR policy. Please look into this serious matter with a hope of correcting it. Thank you.

NAME: Samuel B. Moore-BeyNo.: 09644-050Work assignment: UNICOR-5Unit: 4-B

NOTE: If you follow instructions in preparing your request, it can be disposed of more promptly and intelligently. You will be interviewed, if necessary, in order to satisfactorily handle your request. Your failure to specifically state your problem may result in no action being taken.

cc: file; Mr. D.L. Frank, Factory Manager

DISPOSITION: (Do not write in this space)

DATE _____

Officer

ALP-1330.133
March 1, 1998
Attachment 1

United States Penitentiary
Allenwood, Pennsylvania

ADMINISTRATIVE REMEDY PROCEDURE FOR INMATES
INFORMAL RESOLUTION FORM

NOTE TO INMATE: You are advised that prior to receiving and filing a Request for Administrative Remedy Form BP-9 (BP-203 13) you MUST attempt to informally resolve your complaint through your Correctional Counselor. Briefly state ONE complaint below and list what efforts you have made to resolve your complaint informally and state the names of staff contacted.

Issued By: HHB Initials of Correctional Counselor
Date Issued To The Inmate: 7/27/98

INMATE'S COMMENTS: I have been employed by UNICOR for 18 months. My last pay increase was June 1, 1997(Grade 3). Since then (13 mos.) I have been
1. complaint: arbitrarily and systematically excluded from advancement into available pay increase slots, contrary to the provisions of 28 CFR Ch. 3. Specifically, 28 CFR Ch. 3, Subpart C, §345.20, and other subparts which set standards under color of Federal law, and prohibits discrimination as unlawful conduct.
2. Efforts you have made to informally resolve: I have spoke with both Manager and foremen to no avail.

3. Names of staff you contacted: Mr. Stevenson, Unit Manager Unit 4, Mr. Mar UNICOR Factory Manager, Mr. Holms, Foreman, Mr. Deal, Foreman, Mr. Spade, Foreman. Have written to: Mr. F.T. Mumaw, Associate Warden UNICOR, Mr. D.L. Frank, Past Factory Manager.

Date Returned to Correctional Counselor: 8/4/98

S. Moore Bey
Inmate's Signature

09644-050
Reg. Number

8/3/98
Date

cc: file
CORRECTIONAL COUNSELOR'S COMMENTS:

1. Efforts made to informally resolve and staff contacted:

All attached response + documents

Date BP-9 Issued: _____

HHB
Correctional Counselor

HHB Adrian 8/28/98
Unit Manager (Date)



UNITED STATES GOVERNMENT
MEMORANDUM
Federal Prison Industries
UNITED STATES PENITENTIARY
Allenwood, Pennsylvania 17887

8-24-98

MEMORANDUM FOR G. MANTHEY, UNICOR, FACTORY MANAGER *gm*

UA
FROM R. HOLMES, UNICOR, UPHOLSTERY FOREMAN

SUBJECT: Inmate Moore #09644-050

This memo is in response to a BP-9 that I am in receipt of concerning inmate Moore. This inmate alleges that he has been discriminated against because he has not received a promotion recently. The inmate brought to me a light duty slip from the hospital restricting his ability to work. Mr. Greg Holmes and I discussed what we should do with this inmate because his performance was so poor. We had an opening for someone to file tickets that required very little work. In fact, the inmate that previously had been doing the job was a grade 2, but when he was not working on tickets, he also upholstered. Inmate Moore has not been promoted because his work performance does not dictate that he receive a promotion. He is solely responsible for tracking which inmates receive which pieces of furniture. In fact, most of inmate Moore's day is spent standing around with nothing to do. He has never come to me and asked if there were anything that he could do on top of what little he was currently doing, and certainly never showed any initiative in doing the job he was charged with. It will be my recommendation that this inmate be removed from this ticket job, put on an upholstery table where he will be able to earn a grade promotion. It is also my opinion that with the scant work load that this inmate has presently, he will never be eligible for a promotion.

cc: file

John K. Fawell

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

REQUEST FOR ADMINISTRATIVE REMEDY

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: Moore-Bey, Samuel B. 09644-050 4-B USP Allenwood
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INST. INSTITUTION

Part A- INMATE REQUEST For the record. This is a response to the attached BP-8. Mr. R. Holmes, UNICOR Foreman, has provided severe omissions in his emotional and ludicrous response. For requesting a well earned twenty-three cent pay increase he has insulted the integrity of myself and others similarly situated. The following is true to the best of my recollection: On 2-3-97, I was hired by UNICOR, assigned to the upholstery section. On 6-1-97, I was promoted to Grade-3. From 2-3-97 until 3-27-98, I worked at upholstery in compliance with all work standards pertaining to my work assignment. Good personal conduct. Good punctuality. Good quality productivity (no re-cuts). All performance appraisals were good except the last (which I did not sign). For eighteen mos. I've been subjected to a system of favoritism and select discrimination regarding over-time work and grade level increases. Seriously concerned, on 1-6-98, I wrote to Mr. Mummaw, Associate Warden UNICOR, and sent a copy to Mr. Frank, Factory Manager (at that time) See Attach. No verbal or written reply was received, but there were subtle negative responses from several Foreman which implied "I would never be eligible for a promotion". January 1998, I began to have problems with my right hand. I could not raise my second finger by force of will. It would stick to my palm and had to be raised by my left hand. I was alarmed, but continued to work. On 2-12-98, I went to sick call because my hand had become inflamed. Diagnosis was a "trigger finger" caused

DATE 9-3-98

S. Moore-Bey SIGNATURE OF REQUESTER (See Attach.)

Part B- RESPONSE

This office is in receipt of your request for Administrative Remedy dated September 3, 1998, in which you request consideration for a pay increase within UNICOR.

Institution Supplement, ALP-1020.01 D (2), dated July 1, 1998, entitled FP Work Programs for Inmates states, "Promotions are earned by performance. Inmates may be promoted when they demonstrate good work performance, a promotion exists, time-in-grade and education requirements have been completed and the supervisor recommends the promotion."

My investigation into this matter reveals that promotions within UNICOR are in accordance with the written procedures identified above. Your latest work evaluation from January through March, 1998, indicates a total score of 2 out of a possible 50 points. This evaluation was provided to you by S. Diehl, Foreman; however, you refused to sign the form. This indicates that your reflection of your work performance differs from that of your foreman.

9/24/98
DATE

John F. Fennell
WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 167877-F1

CASE NUMBER: _____

Part C- RECEIPT

Return to:

LAST NAME, FIRST, MIDDLE INITIAL

REG. NO.

UNIT

INSTITUTION

SUBJECT: _____

DATE

RECIPIENT'S SIGNATURE (STAFF MEMBER)

Samuel B. Moore-Bey
Page Two Of Two
September 3, 1998

Request For Administrative Remedy(Con'd)

by a repetitive motion injury. My skill impaired, I received a one day idle, and continued to work. On 2-23-98, I returned to sick call and it was confirmed that my "trigger finger" was the result of a repetitive motion injury caused by the repetitious use of an upholstery tool called a "pick". The "pick" is a small version of an ice pick, and is used to dig staples out of the frame of furniture. The end of the pick handle fits into the palm of the hand, and repeated pressure caused a blockage in the second finger of my right hand. I told the physician assistant that I did not want a lay-in, and would prefer to continue work if possible. The compromise was that I could continue to work, but I was restricted from any repetitive motion with my right hand for 90 days. (See Attach. B). Upon giving said restricted duty slip to Mr. Deal, Foreman, he said "you can grab a broom", and added that he would never force someone to work who had an injury. I elected to continue to work in upholstery with my left hand. My production speed slowed down, but I received no re-cuts. To my knowledge, Administrative Form 19, Injury Report(Inmate), was ever filed in this instant matter - even though my injury is work related. Mr. Greg Holmes, Foreman(at that time), reassigned me on 3-27-98, as a Ticket-Line-Filing-Clerk to replace another inmate who was a Grade-2. It was of course my understanding that by accepting the job I would not be restricted to Grade-3. My duties are: To log in the work order no.; item no.; fabric no.; lot no.; name of upholsterer; style of chair, of every chair that is put on line every day; walk the tickets to final QA station so they will be there when the finished chairs arrive; keep track of all tickets of completed chairs until the order is completed(which sometimes takes weeks); log-in and file all tickets of all complete orders; at end of each day submit to Foreman a copy of all chairs put on line by all Foreman and two assembly line workers each day; add total price of all chairs put on line each day. All records are up-to-date and verifiable by the records(given they still exist). As stated, the inmate who had the job before me was Grade-2. The inmate before him was Grade-1. Same job. No extra upholstery was mandated for either, but available to both via over-time. On 3-31-98, Mr. Deal, Foreman, presented me with an exceptionally low performance appraisal. We both knew he was well aware of my medical situation and my efforts to remain productive in spite of. I refused to sign it. I felt it was unfair(See Attach. D). (See: BOP-Program Statement 104). Recently, I met with an Orthopedic Surgeon who wanted to perform a surgical operation on my hand. We discussed it, and I subsequently chose a hypodermic injection, by him, into the palm of my hand. Medication was shot into my second finger from the inside(See Medical Jacket). On 7-20-98, Mr. Stevenson, Unit 4 Unit Manager, Mr. Manthey, UNICOR Factory Manager, and myself, met in Mr. Manthey's office to discuss these instant matters. I was informed that his (Mr. Manthey's) hands were tied. If the Foreman didn't put me in for a pay increase there was nothing he could do. I have followed his instructions and continued doing my job. I think I understand his position, and so I am utilizing this equitable remedy seeking equitable relief. In conclusion, I believe that discrimination on the basis of my age, race or handicap in job assignments, pay increases, etc., is a deprivation of my right to equal protection secured by the Fifth Amendment, and any retaliation against me for seeking to preserve what ever substantive rights I possess by seeking equitable redress is an infringement on my First Amendment rights. I don't think I have a right to any job or particular job assignment in this prison, but I am certain I have a right to equal protection and equal treatment. I am entitled to the relief sought in these instant matters.

cc : file

attachments

Respectfully submitted,

S. Moore Bey
Samuel B. Moore-Bey
09644-050

Date: September 21, 1998
A/R Number: 167877-F1
Inmate Name: MOORE, Samuel
Register Number: 09644-050
Page 2

The factory is currently completing the April through June, 1998, evaluations. It is my understanding that if you have met all the requirements stated above and the grade is available, you will be considered. However, I do not physically observe the operations on a day to day basis within the factory. Therefore, I can not dictate promotions to the factory staff. I am confident the Factory Manager is able to oversee the operation.

Therefore, your request for administrative remedy is denied.

NAME: MOORE, SAMUEL

REGISTER NUMBER: 09644-050

DETAIL: UNICOR 5

SUPERVISOR: G. WOLTZ

YOU HAVE HEREBY BEEN PROMOTED TO GRADE 3

EFFECTIVE JUNE 01, 1997

CONGRATULATIONS,

UNICOR

" A "

UNITED STATES PENITENTIARY
ALLENWOOD, PENNSYLVANIA

IDLE, CONVALESCENT AND CHANGE IN WORK CLASSIFICATION STATUS

TO: ALL CONCERNED
INMATE'S NAME:

MOORE

UNIT:

4-B

DATE:

2/23/98

DETAIL:

UNICOR

REG. NO.:

09644-050

For Medical purposes, the inmate named above has been authorized the work and/or activity status listed below the reason(s) and the time shown.

MEDICAL CLASSIFICATION STATUS: (Check one and answer questions)

- () IDLE: Reason _____ THRU 12 MIDNIGHT _____, 19 _____
- () CONVALESCENCE: List any restricted activity for medical reasons. _____ THRU 12 MIDNIGHT _____, 19 _____
- ☒ RESTRICTED DUTY: Specify exact restriction and reason. 90 DAYS THRU 12 MIDNIGHT 5/23/98, 19 _____
- () TOTALLY DISABLED: NO REPETITIVE THRU 12 MIDNIGHT _____, 19 _____
- () FULL DUTY: MOTION WITH RIGHT HAND THRU 12 MIDNIGHT _____, 19 _____

Physician or Physician Assistant

DEFINITIONS AND INSTRUCTIONS

IDLE STATUS - Temporary disability not to exceed three days duration including weekends and holidays. Restricted to room except for meals, barbering, religious services, sick call, visits and call outs. No recreation activity.

CONVALESCENT STATUS - Recovery period for operation, injury, or serious illness. Not less than four days and not to exceed thirty days subject to renewal. Excused from work and may not participate in any recreational activities outside the unit.

RESTRICTED DUTY - Restricted from specific activities because of physical or mental handicap. List handicap, work limitation and time period, either specific date or indefinite.

TOTALLY DISABLED - Totally unemployable and unassigned because of mental or physical reasons. Condition generally expected to last indefinitely.

FULL DUTY - No work restrictions because of physical, medical or mental disability.

WHITE - FILE COPY CANARY - MEDICAL RECORDS BLUE - DETAIL SUPERVISOR PINK - UNIT OFFICER

Last seen on 12th

" B "

NAME: MOORE, SAMUEL UNICOR 5 4-B2. REGISTER NUMBER: 09644 105101

INSTITUTION CODE 14281 INDUSTRY CODE 111381 WORK ASSIGNMENT DOT CODE 1780381038

EVALUATION BEGIN DATE 10101981 EVALUATION END DATE 103311981

Rating Scale: 1 = Much Worse than Average 2 = Worse than Average 3 = Average
4 = Better than Average 5 = Much Better than Average

Inmate's Initials 33333232331 Punctuality 3 Attitude on Job 3 Accident Proneness 3 Relations with Others 3 Follows Orders 2 Works Independently 3 Work Habits 3 Level of Skill 3 Effort 2 UNICOR Employment Recommendation 3 Total 28

Supervisor's Initials SHDComment HM Referred to sign

INSTITUTION CODE _____ INDUSTRY CODE _____ WORK ASSIGNMENT DOT CODE _____ 3RD QUARTER

EVALUATION BEGIN DATE _____ EVALUATION END DATE _____

Rating Scale: 1 = Much Worse than Average 2 = Worse than Average 3 = Average
4 = Better than Average 5 = Much Better than Average

Inmate's Initials _____ Punctuality _____ Attitude on Job _____ Accident Proneness _____ Relations with Others _____ Follows Orders _____ Works Independently _____ Work Habits _____ Level of Skill _____ Effort _____ UNICOR Employment Recommendation _____ Total _____

Supervisor's Initials _____

Comment _____

ORIGINAL - Stays with UNICOR

COPIES - One copy to Case Manager, Each Quarter Calendar Year

2ND QUARTER

14281 111381 1780381038

EVALUATION BEGIN DATE 10101981 EVALUATION END DATE 106311981

Rating Scale: 1 = Much Worse than Average 2 = Worse than Average 3 = Average
4 = Better than Average 5 = Much Better than Average

Inmate's Initials _____ Punctuality _____ Attitude on Job _____ Accident Proneness _____ Relations with Others _____ Follows Orders _____ Works Independently _____ Work Habits _____ Level of Skill _____ Effort _____ UNICOR Employment Recommendation _____ Total _____

Supervisor's Initials _____

Comment _____

INSTITUTION CODE _____ INDUSTRY CODE _____ WORK ASSIGNMENT DOT CODE _____ 4TH QUARTER

EVALUATION BEGIN DATE _____ EVALUATION END DATE _____

Rating Scale: 1 = Much Worse than Average 2 = Worse than Average 3 = Average
4 = Better than Average 5 = Much Better than Average

Inmate's Initials _____ Punctuality _____ Attitude on Job _____ Accident Proneness _____ Relations with Others _____ Follows Orders _____ Works Independently _____ Work Habits _____ Level of Skill _____ Effort _____ UNICOR Employment Recommendation _____ Total _____

Supervisor's Initials _____

Comment _____

Depts Copy*Sporkin J.*UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

V.

SAMUEL B. MOORE-BEY

CRIM. NO. ~~95-681M-01~~

95-681M-01

FILED

DEC 26 1995

MOTION TO DISMISS THE INDICTMENTCLERK, U.S. DISTRICT C
DISTRICT OF COLUMBIA

Defendant, Samuel B. Moore-Bey, having been charged in a criminal complaint, on November 8, 1995, with by intimidation, taking from the person and presence of another, money belonging to, and in the possession of Crestar Bank, 300 Pennsylvania Avenue, S.E., Washington, D.C., the deposits of which were insured by the Federal Deposit Insurance Corporation (FDIC), in violation of 18 U.S.C. § 2113 (a), moves the Court, pursuant to the Federal Rules Of Criminal Procedure Rule 48 (b), 18 U.S.C. § 3161-3174, and applicable Const. Amend(s)., to dismiss the indictment in this instant matter, with prejudice.

STATEMENT OF FACTS

On November 7, 1995, the Crestar Bank, 300 Pennsylvania Avenue, S.E., Washington, D.C., was robbed by intimidation (a note), and the defendant was subsequently arrested in connection with said robbery, later that same day.

On November 8, 1995, a Warrant For Arrest, and a Criminal Complaint were issued (See Attachments), for the defendant who was still in custody, by the Honorable Alan Kay, U.S. Magistrate Judge, U.S. District Court For The District Of Columbia. The defendant has been in the care and custody of the U.S. Attorney General since November 7, 1995. The initial arrest was made in connection with formal charges brought.

POINTS AND AUTHORITIES

The right to a speedy trial has both statutory and constitutional support. The Federal Rules Of Criminal Procedure also protect defendants from undue delay. The Speedy Trial Act, 18 U.S.C. § 3161(b)(1988), limits prearrest delay, stating:

(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an

individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

The 30-day period applies only to offenses in original complaint for which defendant was charged when arrested. See: U.S. V. Velasquez, 890 F.2d 717, 719 (5th Cir. 1989); and, U.S. V. Nabors, 901 F.2d 1351, 1355 (6th Cir. 1990).

The Fifth Amendment provides that, "no person shall...be deprived of life, liberty, or property without due process of law." U.S. Const. amend. V. The Fourteenth Amendment imposes the identical limit on the states. U.S. Const. amend. XIV. The Sixth Amendment provides that, "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. The Sixth Amendment speedy trial guarantee is binding on the states through the Due Process Clause of the Fourteenth Amendment. See: Klopfer V. North Carolina, 386 U.S. 213, 222-23(1967). This Sixth Amendment speedy trial right is triggered by the actual restraints imposed by arrest only if the arrest leads directly to formal criminal charges being instituted and prosecution begins. See: U.S. V. MacDonald, 456 U.S. 1, 6-7(1982); U.S. V. Marion, 404 U.S. 307, 320(1971); U.S. V. Velasquez, 890 F.2d 717, 719-20(5th Cir. 1989); and, U.S. V. Nabors, 901 F.2d 1351, 1355(6th Cir.), cert. denied, 111 S. Ct. 192 (1990).

The Federal Rules Of Criminal Procedure 48(b), is limited to postarrest situations, and the arrest must be for charges in indictment that defendant seeks to dismiss. It authorizes dismissal for any unnecessary delay by government in presenting charge to grand jury, filing information, or bringing defendant to trial. See: U.S. V. Marion, 404 U.S. 307, 319(1971); and, U.S. V. Reme, 738 F.2d 1156, 1164(11th Cir. 1984).

The Supreme Court has held, that impairment of defense is the most important interest protected by speedy trial guarantee. This guarantee also protects against the impact of undue impairment of liberty. Dismissal is the only possible remedy for violation of Sixth Amendment speedy trial rights. See: Barker V. Wingo, 407 U.S. 514, 532(1972); Strunk V. U.S., 412 U.S. 434, 439-40 (1973); Doggett V. U.S., 112 S. Ct. 2686, 2692(1992); and, Wells V. Petsock, 941 F.2d 253, 257-58(3rd Cir. 1991). Along with a four-part test to analyze a defendant's Sixth Amendment speedy trial claim, the Barker Court also set down a criterion requiring the court to consider any prejudice to the defendant in light of the liberty interest protected by speedy trial rights. Three such interests are:

- (1) preventing oppressive pretrial incarceration; (2) mini-

mizing anxiety and concern; and (3) limiting the possibility that delay will impair the defense.

In Doggett, the Court held that a presumption of prejudice established by the first Barker criterion may alone constitute a sufficient showing of prejudice to the defendant, vitiating the need for a showing of actual prejudice where "the presumption of prejudice, albeit unspecified, is neither extenuated...nor persuasively rebutted." See: Doggett, 112 S.Ct. at 2694. Accordingly, "consideration of prejudice is not limited to the specifically demonstrable...and affirmative proof of particularized prejudice is not essential to every speedy trial claim." See: Moore V. Arizona, 414 U.S. 25,26(1973).

The defendant's degree of anxiety suffered is immeasurable, and the magnitude of his distress is a conflict that cannot be told in words. In the past, defendant has been diagnosed as having a Bipolar Affective Disorder (Manic-Depressive), his fears are now multiplied, often times, to the equivalent of the terrors of death. According to the Supreme Court, "little can be said on when a delay becomes presumptively improper, for the determination necessarily depends on the facts of the particular case." See: U.S. V. \$8,850, 461 U.S. 555, 556(1983); U.S. V. Greer, 655 F.2d 51, 52-53(5th Cir. 1981); and, U.S. V. Holyfield, 802 F.2d. 846, 848(6th Cir. 1986).

WHEREFORE, in the light of pro se litigation, these instant matters being neither unusual nor complex, the defendant prays, this Honorable Court, shall preserve and grant his Motion To Dismiss The Indictment, with prejudice.

/s/ S. Moore-Bey
Samuel B. Moore-Bey, pro se
DCDC 141-821
Box 98 - Youth Center #
Lorton Va. 22199

CERTIFICATE OF SERVICE

I hereby declare that the Original and two (2) copies of this Motion To Dismiss The Indictment, has been mailed this 18th day of

December, 1995, to the Clerk Of The Court, United States District Court For The District Of Columbia, to be served on all interested parties.

ATTACHMENT(S)

cc: Ms. Reita Pendry, Esq.
Federal Public Defender Service
625 Indiana Avenue, N.W. Suite 550
Washington, D.C. 20004